

**ILIGAN CEMENT CORPORATION, PETITIONER, VS. THE COURT OF APPEALS, HON. ZOSIMO Z. ANGELES, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 58, MANILA AND BETA ELECTRIC CORPORATION, ...**

*G.R. No. 103437. November 25, 1994*

Ponente: QUIASON, J.

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**QUIASON, J.:**

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the decision of the Court of Appeals in CA - G.R. CV No. 27189, which affirmed the decision of the Regional Trial Court, Branch 58, Manila in Civil Case No. 15634.

We deny the petition.

**I**

The facts of the case as found by the Court of Appeals are as follows:

"In 1981, the Iligan Cement Corporation (ICC), started undertaking its 'Plant Rehabilitation' program of power requirements which had to be implemented on a phase-to-phase basis. Phase I of this program consisted in the installation of power factor correction equipment. Based on the study made by the ICC safety engineer and electrical engineering consultant, Engineer Fernando Munasque, the ICC decided to have installed in the plant a combination of the group and the total power factor correction substations. With the general specifications furnished to prospective suppliers, the ICC requested the former to give their respective price quotations for the equipment. Of the four would-be suppliers the ICC considered the quotation of the BETA Electric Corporation (Beta) as the most reasonable. The quotation was for either a six-step power factor corrective equipment or for a three-step corrective power equipment. Subsequently, on August 19, 1983, Beta electric likewise submitted a cost estimate with regard to the installation, commissioning and testing of the equipment together with the supply of wires, lugs and foundation. After a thorough evaluation of these proposals, the ICC, through the recommendation of Engr. Munasque and Engr. Pachler, a Swiss consultant, decided on the purchase of a three-step power factor correction equipment. It likewise accepted the Beta proposal for the installation, commissioning and testing of the power factor equipments. Purchase orders were sent to Beta by ICC to cover these transactions on October 14, 1983. These were however cancelled and superseded by the purchase orders filed on November 7, 1983, to take into account the increase in prices of material components of the power factor equipment. It appeared from these purchase orders that the equipment cost P654,000.00 while the installation, commissioning and testing would amount to P39,947.00.

On November 21, 1983, Beta submitted to ICC its proposed construction and wiring diagram for the latter's comment and approval.

The equipment was delivered to Iligan at plaintiff's cement plant there. This equipment upon the approval of the plaintiff, was installed. On November 2, 1985, in the presence and with the approval, of ICC engineering

staff, the equipment was switched on. Thereafter, a chattering sound was heard, and fire ensued.

An assessment of the extent of the damage showed that equipment loss amounted to P8,577,581.84 (Exhs. I and I-2). This however did not include the power factor correction equipment installed and switched on that day since it proved to be intact and undamaged despite the fire.

No one claimed responsibility for the fire. Thus, both parties decided to form a technical committee to study the technical causes of the fire. The committee, as agreed upon, was composed of five members, two from each party and the fifth member, to be unanimously chosen by the parties, who would also act as the chairman. The parties chose Engr. Alejandro Jimenez as chairman, a noted electrical engineer.

On April 30, 1986, the committee submitted its report. Its findings showed that the fire was 'caused by arcing faults and restrikes arising from overvoltage produced by switching the 600 KVAR capacitors into the 4160-volt system which is susceptible to arcing faults and whose equipment are not well protected against overvoltage. The fire and the damages it caused was due to the fact that oil circuit breakers were used indoors' (Records, p. 128).

Despite this report, the parties were unable to pinpoint which should shoulder what cost. Thus, on December 29, 1986, the ICC filed a complaint for damages against Beta. It was plaintiff's theory that part of the defendant's duty as the entity commissioned by the ICC to manufacture, install, commission and test the equipment was the making of a prior technical audit. This stemmed from a comment made by the committee stating that the fire could have been avoided 'had a technical audit been made before the capacitors were considered.'

Defendant contended that plaintiff had no cause of action against it inasmuch as:

a.) Defendant performed all its obligations to plaintiff under their contract.

i) The design and specifications for the power factor corrective equipment were made exclusively by plaintiff which had in its employ an expert, a safety engineer and electrical engineering consultant.

ii.) The power factor correction equipment delivered and installed by Beta was in accordance with plaintiff's own design and specifications.

iii.) Plaintiff approved the construction and wiring drawings for the equipment delivered by Beta.

iv.) Plaintiff inspected and accepted the power factor equipment delivered by Beta.

v.) The equipment passed all the tests required by the plaintiff.

vi.) The energization and switching on the equipment was previously cleared with and approved by plaintiff.

vii) The equipment suffers from no defect or deficiency whatsoever (Records, pp. 31-32).

Furthermore, defendant asserted that 'plaintiff itself made a study of its electrical system and on the basis of such study, decided on a power factor corrective equipment which (it) itself designed.' Thus, it cannot be faulted if plaintiff's own study did not reveal the weakness and deficiency of its electrical system.

After a series of hearings, the trial court decided for the defendant. It held:

'To the mind of the court, BEC has not at all breached its capacitor contract with ICC, let alone could such alleged breach of the contract be considered as the proximate cause of the November 2, 1985 fire that damaged ICC's major substation and other power utilization equipment at its Iligan cement plant. It must be noted that BEC's contract with ICC caused only the supply, installation, commissioning and testing with the 63 step (sic) power factor capacitor at ICC's Iligan plant. The transaction itself came into being as a brainchild of ICC's own safety

and consultant professional electrical engineer, Fernando Munasque who (in coordination with ICC's projects group composed of foreign and local engineers) studied, designed and recommended the acquisition of the capacitor in 1981 admittedly for cost saving purposes. In fact, Engineer Munasque even provided the design, specifications and diagram of the capacitor and discussed its details with BEC's engineers. Furthermore, ICC supervised the manufacture of the capacitor as BEC had to submit to ICC for approval all construction, drawings, wirings and other details relative thereto" (Rollo, pp. 34-37).

The Court of Appeals affirmed the decision of the trial court, dismissing the complaint and ordering the plaintiff (herein petitioner) to pay the defendant (herein private respondent) the sum of P1,012,269.61 as actual damages (representing the unpaid price of the power-factor correction equipment as of November 30, 1989) and P150,000.00 as attorney's fees (Rollo, pp. 83-84).

## II

In this petition, petitioner insists that the proximate cause of the fire was the negligence of private respondent in switching on the capacitor into the electrical system of petitioner without first determining whether said connection could be done safely. According to petitioner, if private respondent took said precaution, it could have found that it was not safe to do so and that there was no need for said equipment to be switched on because the cement plant's power factor had reached the desired level even without the use of said equipment.

## III

The relations of the parties is governed by the provisions of the Civil Code of the Philippines on contracts for a piece of work.

Article 1713 of said Code provides:

"By the contract for a piece of work the contractor binds himself to execute a piece of work for the employer, in consideration of a certain price or compensation. The contractor may either employ only his labor or skill, or also furnish the material."

A contractor is responsible for the damages caused by the defects in the work or by the use of materials of inferior quality or due to any violation of the terms of the contract (cf. Civil Code of the Philippines, Art. 1723; Tolentino, Civil Code of the Philippines 291 [1992]).

Petitioner failed to present evidence that there was a defect in the capacitor it ordered from private respondent; that the latter used materials of inferior quality; or that it had violated the terms of the contract for the supply of said equipment.

The Court of Appeals was categorical that private respondent "did not at all break its contractual obligation with plaintiff-appellant (petitioner)" (Rollo, p. 40).

Another point to consider is that after the fire, the capacitor was still in good condition, which could only mean that private respondent had complied with the design made by the engineers of petitioner.

Based on the findings of the Technical Committee, the trial court concluded that the overvoltage, caused by the weak and inadequate electrical system of the cement plant, generated the sparks which ICC's circuit breakers failed to isolate or neutralize. Hence, the sparks spread to other bigger-sized circuit breakers of the cement plant's electrical system, heated the poorly insulated electrical wiring and ignited the oil in the circuit breakers and transformer equipment.

The Court of Appeals agreed with the trial court that the overvoltage was caused by the weak and deficient electrical system, including the lack of protective relays, of the cement plant itself (Rollo, p. 40).

The installation of the equipment prior to its switching on into the electric system of the cement plant was made under the supervision of the engineers of petitioner. The wiring lay-out plans were also approved by petitioner (Rollo, p. 41).

Petitioner has its own engineering staff and foreign consultants, who were knowledgeable about the capacity and requirements of the electrical system of the cement plant.

It was petitioner itself which made a study of its electrical system and on the basis of such study decided on the specifications of the capacitor. Likewise, it was petitioner itself that designed the equipment it ordered from private respondent. The blame cannot be laid at the door of private respondent, if petitioner's study did not take into consideration the deficiency of its electrical system. Whatever defects or imperfections were extant in the design were the responsibility of petitioner's resident engineers. It was petitioner which formally communicated to private respondent in a letter dated July 25, 1982, requesting for a quotation for a power-capacitor bank and attaching thereat a lay-out of said capacitor bank.

According to the Technical Committee, "had a technical audit been made before the capacitors were considered, the system would have revealed its weakness" (Rollo, p. 89).

It was petitioner's duty to conduct a periodic technical audit of the cement plant. In this particular case, petitioner was remiss in its duty (TSN, March 4, 1988, pp. 52-54).

The "technical audit" is not included in the contract for commissioning, installing and testing of the power capacitor. It was supposed to be the subject of another contract between the parties but which did not push through because of the fire.

Petitioner contends that there was no more need to switch-on the capacitor prior to the accident because its power factor had already been raised to 93.3%, which was more than the desired 85% level. It was petitioner which ordered the capacitor. It was in a better position to ascertain whether or not it still needed the equipment. It was its duty to inform private respondent that it had already achieved the desired power factor rating.

Finally, petitioner claims that the Court of Appeals and the trial court substituted their own judgment for the findings of fact of the Technical Committee. The fact is that the Technical Committee only made these conclusions as to what, not who, caused the fire. The two courts were the ones which determined who was to be blamed for the fire on the basis of the findings of fact of the Technical Committee. In brief, the two courts did not alter the findings of fact of the Technical Committee, much less make their own findings.

WHEREFORE, the petition is DENIED and the decision of the Court of Appeals is AFFIRMED.

**SO ORDERED.**

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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